

STATE OF WISCONSIN Division of Hearings and Appeals

In the Matter of

DECISION

MDD/154472

PRELIMINARY RECITALS

Pursuant to a petition filed November 08, 2013, under Wis. Stat. § 49.45(5), and Wis. Admin. Code § HA 3.03(1), to review a decision by the Department of Health Services, Disability Determination Bureau, in regard to Medical Assistance, a hearing was held on February 18, 2014, at Milwaukee, Wisconsin.

NOTE: The record was held open to give the Petitioner an opportunity to supplement the record. On February 25, 2014 the Petitioner submitted a fax that included records from Froedert & the Medical College of Wisconsin. It has been marked as Exhibit 3 and entered in the record. On March 13, 2014, the Petitioner submitted a fax that included a number of UA results and medical records from the Milwaukee County Behavioral Health Division. It has been marked as Exhibit 4 and entered into the record.

The issue for determination is whether the Division of Hearings and Appeals has jurisdiction to address the merits of Petitioner's request for Medicaid benefits.

There appeared at that time and place the following persons:

PARTIES IN INTEREST:

Petitioner:



Respondent:

Department of Health Services 1 West Wilson Street, Room 651 Madison, Wisconsin 53703 By: DDB by file

ADMINISTRATIVE LAW JUDGE: Mayumi M. Ishii
Division of Hearings and Appeals

FINDINGS OF FACT

1. Petitioner is a resident of Milwaukee County.

- 2. On October 9, 2012, the Petitioner filed an application for Social Security Disability Income (SSDI), stating that she had become disabled by mental illness, degenerative joint disease and diabetes. (DDB file)
- 3. On July 2, 2013, the Petitioner filed an application for disability-based Medicaid benefits, stating that she has become disabled by bi-polar disorder, post-traumatic stress disorder, diabetes and related eye issues, degenerative disk disease and high blood pressure. (DDB file)
- 4. On May 17, 2013, the Social Security Administration (SSA) denied Petitioner's application for SSDI. (DDB file)
- 5. The Petitioner filed for reconsideration of the SSA decision, asserting that she also suffered from platelet issues and balance issues. (DDB file)
- 6. On October 11, 2013, the SSA again denied the Petitioner's application for SSDI.
- 7. On October 17, 2013, the DDB denied Petitioner's application for disability-based Medicaid benefits. (DDB file)
- 8. On November 8, 2013, the Petitioner filed for reconsideration of the DDB decision, stating that she was also suffering from nerve damage in her toes and fingers, lower back pain, pain in her left hand and pain the entire right side of her body. (DDB file)
- 9. On November 20, 2013, the Petitioner was admitted to the Milwaukee County Mental Health Complex and hospitalized until November 22, 2013, for suicidal and homicidal ideation. She was diagnosed with major depressive disorder and post-traumatic stress disorder. (Exhibit 4)
- 10. December 19, 2013, the DDB again denied Petitioner's application for Medicaid benefits and on December 30, 2013, the DDB forwarded Petitioner's file to the Division of Hearings and Appeals for review. (DDB file)
- 11. Petitioner's diagnoses include Grave's disease, hypertension, hypothyroidism, diabetes, neuropathy, degenerative disk disease, depression, and poly-substance abuse (in remission). (DDB file; Exhibit 1 and Exhibit 4)

DISCUSSION

It is a well-established principle that a moving party generally has the burden of proof, especially in administrative proceedings. <u>State v. Hanson</u>, 295 N.W.2d 209, 98 Wis. 2d 80 (Wis. App. 1980). In a case involving an application for medical assistance, the applicant has the initial burden to establish he or she met the application requirements.

A person between ages 18 and 65, with no minor children, must be blind or disabled to be eligible for MA. A finding of disability must be in accordance with Federal Social Security/SSI standards. *See Wis. Stats. §49.47(4)(a)4.* Because the standards are the same, a finding of no disability for Social Security/SSI purposes made within 12 months of the Medicaid application is binding on a State Medicaid agency. Exceptions may occur only if certain conditions exist. Specifically, the Division of Hearings and Appeals has no authority to find a Petitioner disabled unless he or she:

- (i) Allege[s] a disabling condition <u>different from, or in addition to,</u> that considered by SSA in making its determination; <u>or</u>
- (ii) [The MA application is more than 12 months after the most recent SSA determination]; or
- (iii) Alleges less than twelve months after the most recent SSA determination denying disability that his or her condition has <u>changed or deteriorated</u> since that SSA determination, alleges a new period of disability which meets the original durational requirements of the Act, <u>and</u>

(A) Has applied to SSA for reconsideration or reopening of its disability decision and SSA refused to consider the new allegations.

42 CFR 435.541(c)(4)(emphasis added).

Here, Petitioner applied for Social Security Disability benefits and Medicaid benefits based upon the same disabling conditions. The SSA denied Petitioner's request for benefits within 12 months of her application for Medicaid, both on initial application and reconsideration. However, Petitioner contends that her condition has gotten worse since she was denied SSDI on October 11, 2013.

Although Petitioner suffered an acute depressive episode and was hospitalized for three days in November 2013, due to suicidal and homicidal ideation, the medical records from her hospitalization do not support a finding that her condition has changed overall. (See Exhibit 4) As such, the SSA decision is binding and there is no jurisdiction for the Division of Hearings and Appeals to review the merits of Petitioner's appeal.

The Petitioner can, however, apply for the Badger Care program, because it is now open to childless adults with income less than 100% of the Federal Poverty Level. The Petitioner can apply on-line at access.wisconsin.gov. If she has difficulty with the website, she can call 1-

CONCLUSIONS OF LAW

That the Division of Hearings and Appeals does not have the authority to address the merits of Petitioner's application for disability-based Medicaid benefits when there is a Social Security Administration denial of disability within 12 months of the Medicaid application.

THEREFORE, it is

ORDERED

That the petition is dismissed.

REQUEST FOR A REHEARING

This is a final administrative decision. If you think this decision is based on a serious mistake in the facts or the law, you may request a rehearing. You may also ask for a rehearing if you have found new evidence which would change the decision. Your request must explain what mistake the Administrative Law Judge made and why it is important or you must describe your new evidence and tell why you did not have it at your first hearing. If you do not explain these things, your request will have to be denied.

To ask for a rehearing, send a written request to the Division of Hearings and Appeals, P.O. Box 7875, Madison, WI 53707-7875. Send a copy of your request to the other people named in this decision as "PARTIES IN INTEREST." Your request for a rehearing must be received no later than 20 days after the date of the decision. Late requests cannot be granted.

The process for asking for a rehearing is in Wis. Stat. § 227.49. A copy of the statutes can be found at your local library or courthouse.

APPEAL TO COURT

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You may also appeal this decision to Circuit Court in the county where you live. Appeals must be served and filed with the appropriate court no more than 30 days after the date of this hearing decision (or 30 days after a denial of rehearing, if you ask for one).

For purposes of appeal to circuit court, the Respondent in this matter is the Department of Health Services. After filing the appeal with the appropriate court, it must be served on the Secretary of that Department, either personally or by certified mail. The address of the Department is: 1 West Wilson Street, Room 651, Madison, Wisconsin 53703. A copy should also be sent to the Division of Hearings and Appeals, 5005 University Avenue, Suite 201, Madison, WI 53705-5400.

The appeal must also be served on the other "PARTIES IN INTEREST" named in this decision. The process for appeals to the Circuit Court is in Wis. Stat. §§ 227.52 and 227.53.

Given under my hand at the City of Milwaukee, Wisconsin, this 21st day of March, 2014.

\sMayumi M. Ishii Administrative Law Judge Division of Hearings and Appeals



State of Wisconsin\DIVISION OF HEARINGS AND APPEALS

Brian Hayes, Administrator Suite 201 5005 University Avenue Madison, WI 53705-5400 Telephone: (608) 266-3096 FAX: (608) 264-9885 email: DHAmail@wisconsin.gov Internet: http://dha.state.wi.us

The preceding decision was sent to the following parties on March 21, 2014.

Milwaukee Enrollment Services Disability Determination Bureau